

REMARKS/ARGUMENTS

The Final Office Action dated 12/13/2007 rejected claims 1-4 and 6-8. By the present amendment, claim 1 is amended, and claims 3 and 6 are canceled. Claims 1, 2, 4, 7 and 8 remain pending and under examination.

This Amendment and Response is being submitted within two months of the mailing date of the Final Rejection. Calculation of a shortened statutory period for reply under MPEP 714.13 is requested. In the event that the Office does not mail an advisory action until after the end of the three-month period set in the final office action extension of time fees will be based on the date of mailing of the advisory action.

Entry of the present amendment is respectfully requested under 37 CFR 1.116 and MPEP 714.13, which provides: "The proposed amendment should be given sufficient consideration to determine whether the claims are in condition for allowance and/or whether the issues on appeal are simplified." The present amendment is intended to address issues raised in the interview described below. In view of the above amendments and the following remarks, the Examiner is respectfully requested to withdraw the rejections and allow claims 1, 2, 4, 7 and 8 and pass this application to issue.

Rejection of Claims under 35 USC §103(e) over Sportsman et al. (US 6,806,053) in view of Iwasaki et al. (J. Biol. Chem. 2002) and Hirata et al. (J. Biol. Chem. 1990) (office Action paragraph 3)

The Official Action rejects claims 1 – 4 and 6 – 8, the only claims under consideration under 35 U.S.C. §103(a) based on Sportsman, Iwasaki and Hirata. This was the sole remaining rejection in the case.

Response

The courteous interview granted applicants' attorney, Bertram Rowland, is gratefully acknowledged.

The claims have been amended to include language from claims 3 and 6 in amended claim 1. A typographical error was corrected in the language of original claim 6 dropping the "D" from "1.5 kD", where the clear intent was not to indicate the molecular weight of amino acids, but the number of amino acids.

The gravamen of the telephonic interview was primarily to reiterate what has been repeated previously. It was the Examiner's position that as long as there is a suggestion of the modified 2-position of IP₃ and the disclosure of the sponge protein IP₃ binding protein, that is sufficient where the steps of the assay are generally known. The Examiner indicated that with the incorporation of the limitation of inhibitors of kinases and phosphatases, a new search would be performed to determine whether this limitation was generally known in the art for analogous assays.

It was applicants' attorney's position that the standard should be whether there was a reasonable expectation of success. The record created by applicants had shown that there was sufficient doubt concerning the binding of the 2-analog of IP₃ to the rat membrane as to the specificity and affinity of the 2-analog. Furthermore, the truncated IP₃R from starfish with its 1000 fold affinity for IP₃ required a substantial change in conformation to justify such a major change in affinity, making it uncertain whether the 2-analog would bind. Since there could be no reasonable expectation of success, the subject claims should be allowable.

The Examiner is respectfully requested to reconsider his position and if the Examiner's search supports the patentability of the subject claims, the Examiner is respectfully requested to pass this application to issue. In any event, the Examiner is respectfully requested to enter the above amendments for purposes of further procedure, as the amendments do not add any new issues that have not been considered previously, the new limitations in claim 1 having been taken from previously presented claims.

Respectfully submitted,

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